

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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**SECOND NOTICE OF PROPOSED MODIFICATIONS TO
CALIFORNIA CODE OF REGULATIONS**

**TITLE 8: Chapter 4, Subchapter 7, Article 109, Section 5199
of the General Industry Safety Orders**

Aerosol Transmissible Diseases

Pursuant to Government Code Section 11346.8(c), the Occupational Safety and Health Standards Board (Standards Board) gives notice of the opportunity to submit written comments on the above-named proposed standards in which further modifications are being considered.

On August 21, 2008, the Standards Board held a Public Hearing to consider revisions to Title 8, Section 5199 of the General Industry Safety Orders. The Standards Board received oral and written comments on the proposed revisions. On February 26, 2009, a Notice of Proposed Modifications was provided and the standard was modified as a result of these comments and the Division of Occupational Safety and Health's consideration.

Further modifications are now proposed for subsections (g)(3)(B) and (h)(5).

An effective date of September 1, 2010, has been added to subsection (g)(3)(B) to provide employers whose employees perform high hazard procedures with additional time to implement this provision, including evaluation and purchase of any additional equipment, and providing training to employees who will use respirators for high hazard procedures.

An effective date of September 1, 2010, has been added to subsection (h)(5) to provide additional time for implementation of vaccine requirements for health care workers to employers so that they can assess their employees' vaccination status and provide any necessary vaccine doses. This extended implementation date does not apply to seasonal influenza vaccine, which is addressed by subsection (h)(10).

A copy of the revised text with these modifications clearly indicated is attached for your information.

Pursuant to Government Code Section 11346.8(d), notice is also given of the opportunity to submit comments concerning the addition to the rulemaking file of the following documents relied upon:

ADDITIONAL DOCUMENTS RELIED UPON

1. The Turnaround Lifeline, Volume 2, Issue 1, January 6, 2009.
2. KESQ, Prison Returns to Operations in Midst of Flu Outbreak, March 19, 2008.
3. Nikki Baumrind, e-mail regarding Respiratory Outbreak at Chuckawalla SP in Blythe, dated March 10, 2008.

These documents are available for review during normal business hours at the Standards Board's Office located at the address below.

Any written comments on these modifications must be received by 5:00 p.m. on April 20, 2009, at the Occupational Safety and Health Standards Board, 2520 Venture Oaks Way, Suite 350, Sacramento, California 95833. Comments may also be sent by fax to (916) 274-5743 or email to oshsb@dir.ca.gov. The standards will be scheduled for adoption at a future business meeting of the Standards Board.

The Standards Board's rulemaking files on the proposed action are open to public inspection Monday through Friday, from 8:00 a.m. to 4:30 p.m., at the Standards Board's office.

Inquiries concerning the proposed changes may be directed to the Executive Officer, Marley Hart, at (916) 274-5721.

OCCUPATIONAL SAFETY AND HEALTH
STANDARDS BOARD

Date: April 3, 2009

Marley Hart, Executive Officer

PROPOSED MODIFICATIONS
(Further modifications to Section 5199,
subsections (g)(3)(B) and (h)(5) are indicated in
bold double underline wording for new language
and bold double strike-out for deleted language)

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Amend Section 5199 as follows:

§ 5199. ~~Melting Operations.~~ Aerosol Transmissible Diseases.

(g) Respiratory Protection.

- (1) Respirators provided for compliance with this section shall be approved by NIOSH for the purpose for which they are used.
- (2) Each employer who has any employee whose occupational exposure is based on entering any of the work settings or performing any of the tasks described in subsection (g)(4) shall establish, implement and maintain an effective written respiratory protection program that meets the requirements of Section 5144 of these orders, except as provided in subsections (g)(5) and (g)(6).

NOTE to subsection (g)(2): The respiratory protection program may be incorporated into the ATD Exposure Control Plan or the Biosafety Plan.

- (3) Respirator selection.

(A) Where respirator use is required for protection against potentially infectious aerosols and is not required to meet the requirements of subsections (g)(3)(B) or (g)(3)(C), the employer shall provide a respirator that is at least as effective as an N95 filtering facepiece respirator, unless ~~the CDC or CDPH specifies~~ the employer's evaluation of respiratory hazards determines that a more protective level respirator is necessary, in which case the more protective respirator shall be provided.

(B) **Effective September 1, 2010,** ~~if~~ The employer shall provide a powered air purifying respirator (PAPR) with a High Efficiency Particulate Air (HEPA) filter(s), or a respirator providing equivalent or greater protection, to employees who perform high hazard procedures on AirID cases or suspected cases and to employees who perform high hazard procedures on cadavers potentially infected with ATPs, unless the employer determines that this use would interfere with the successful performance of the required task or tasks. This determination shall be documented in accordance with the ATD Plan and shall be reviewed by the employer and employees at least annually in accordance with subsection (d)(3).

EXCEPTION 1 to subsection (g)(3)(B): Where a high hazard procedure is performed by placing the patient in a booth, hood or other ventilated enclosure that effectively contains and removes the aerosols resulting from the procedure, and the employee remains outside of the enclosure, the employee may use a respirator meeting the requirements of subsection (g)(3)(A).

EXCEPTION 2 to subsection (g)(3)(B): Paramedics and other emergency medical personnel in field operations may use a P100 respirator in lieu of a PAPR.

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(h) Medical Surveillance Services.

- (1) Each employer who has any employee with occupational exposure shall provide the employee with medical ~~surveillance services~~ for tuberculosis and other ATDs, and infection with ATPs and ATPs-L, in accordance with applicable public health guidelines, as recommended by the CDC and/or the CDPH for the type of work setting and disease. When an employer is also acting as the evaluating health care professional, the employer shall advise the employee following an exposure incident that the employee may refuse to consent to vaccination, post-exposure evaluation and follow-up from the employer-health care professional. When consent is refused, the employer immediately shall make available a confidential vaccination, medical evaluation or follow-up from a PLHCP other than the exposed employee's employer.
- (2) Medical ~~surveillance services provisions~~, including vaccinations, ~~tests~~, examinations, evaluations, determinations, procedures, and medical management and follow-up, shall be:
 - (A) Performed by or under the supervision of a PLHCP;
 - (B) Provided according to applicable public health guidelines ~~any CDC and CDPH recommendations that are current at the time these evaluations and procedures take place~~; and
 - (C) Provided in a manner that ensures the confidentiality of employees and patients. Test results and other information regarding exposure incidents and TB conversions shall be provided without providing the name of the source individual.
- (3) The employer shall make ~~surveillance assessment~~ for latent tuberculosis infection (LTBI) available to all employees with occupational exposure. Surveillance Assessment procedures shall be in accordance with ~~the most recent recommendations of the CDC and CDPH~~ applicable public health guidelines.
 - (A) TB tests and other forms of TB surveillance assessment shall be provided at least annually, and more frequently, if ~~the CDC, CDPH~~ applicable public health guidelines or the local health officer recommends more frequent testing. Employees with baseline positive TB test shall have an annual symptom screen.
 - (B) The employer shall refer employees who experience a TB conversion to a PLHCP knowledgeable about TB for evaluation.
 1. The employer shall provide the PLHCP with a copy of this standard and the employee's TB test records. If the employer has determined the source of the infection, the employer shall also provide any available diagnostic test results including drug susceptibility patterns relating to the source patient.
 2. The employer shall request that the PLHCP, with the employee's consent, perform any necessary diagnostic tests and inform the employee about appropriate treatment options.
 3. The employer shall request that the PLHCP determine if the employee is a TB case or suspected case, and to do all of the following, if the employee is a case or suspected case:

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- a. Inform the employee and the local health officer in accordance with Title 17.
- b. Consult with the local health officer and inform the employer of any infection control recommendations related to the employee's activity in the workplace.
- c. Make a recommendation to the employer regarding precautionary removal due to suspect active disease, in accordance with subsection (h)(8), and provide the employer with a written opinion in accordance with subsection (h)(9).

(C) TB conversions shall be recorded in accordance with California Code of Regulations, Title 8, Section 14300 et seq.

(D) Unless it is determined that the TB test conversion is not occupational, the employer shall investigate the circumstances of the conversion, and correct any deficiencies found during the investigation. The investigation shall be documented in accordance with subsection (j).

EXCEPTION to subsection (h)(3): Research and production laboratories in which *M. tuberculosis* containing materials are not reasonably anticipated to be present, need not provide ~~surveillance assessment~~ for LTBI infection.

(4) Laboratory tests shall be conducted by an accredited laboratory.

(5) The employer shall make available to all susceptible health care workers with occupational exposure all vaccine doses listed in Appendix E. Employees in laboratory operations outside of health care settings, and within the scope of subsection (f), shall be provided with vaccines in accordance with the BMBL ~~CDC and CDPH recommendations~~ for the specific laboratory operations. **The requirements in subsection (h)(5) will become effective on September 1, 2010.**

(A) Recommended vaccinations shall be made available to all employees who have occupational exposure after the employee has received the training required in subsection (c) or (i) and within 10 working days of initial assignment unless:

1. The employee has previously received the recommended vaccination(s) and is not due to receive another vaccination dose; or
2. A PLHCP has determined that the employee is immune in accordance with applicable public health ~~current CDC and CDPH~~ guidelines; or
3. The vaccine(s) is contraindicated for medical reasons.

(B) The employer shall make additional vaccine doses ~~available~~ available to employees within 120 days of the issuance of new applicable public health guidelines recommending the additional dose ~~CDC or CDPH recommendations~~.

(C) The employer shall not make participation in a prescreening serology program a prerequisite for receiving a vaccine, unless ~~CDC or CDPH~~ applicable public health guidelines recommend this prescreening prior to administration of the vaccine.

(D) If the employee initially declines a vaccination but at a later date, while still covered under the standard, decides to accept the vaccination, the employer shall

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make the vaccination available in accordance with subsection (h)(5)(A) within 10 working days of receiving a written request from the employee. ~~that request, in accordance with subsection (h)(5)(A).~~

(E) The employer shall ensure that employees who decline to accept a recommended and offered vaccination sign the statement in Appendix C1 for each declined vaccine.

(F) The employer shall request the PLHCP administering a vaccination or determining immunity to provide only the following information to the employer:

1. The employee's name and employee identifier.
2. The date of the vaccine dose or determination of immunity.
3. Whether the employee is immune to the disease, and whether there are any specific restrictions on the employee's exposure or ability to receive vaccine.
4. Whether an additional vaccination dose is required, and if so, the date the additional vaccination dose should be provided.

EXCEPTION to subsection (h)(5): Where the employer cannot implement these procedures because of the lack of availability of vaccine, the employer shall document efforts made to obtain the vaccine in a timely manner and inform employees of the status of the vaccine availability, including when the vaccine is likely to become available. The employer shall check on the availability of the vaccine at least every ~~10 working days~~ 60 calendar days and inform employees when the vaccine becomes available.
